



re: 07cv649 JJF-LPS  
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December 3, 2007

**VIA HAND DELIVERY AND FEDERAL EXPRESS**

Jeffrey N. Lüthi  
Clerk of the Panel  
Judicial Panel on Multidistrict Litigation  
Thurgood Marshall Federal Judiciary Building  
One Columbus Circle, NE, Room G-255, North Lobby  
Washington, DC 20002-8004

Re: *In re LPL and Phoenix Licensing Patents Litigation* - MDL No. 1910

Dear Mr. Lüthi:

Enclosed are an original and five copies of:

1. Direct Response Corporation, Response Worldwide Insurance Company, And Warner Insurance Company's Response to the Citi Parties' Motion To Consolidate And Transfer Under 28 U.S.C. § 1407
2. Proof of Service

Please file the above with the MDL Panel and return the extra file-stamped copy to us in the enclosed, self-addressed return envelope.

Lüthi  
December 3, 2007  
Page 2

We are enclosing a disk containing copies of the above-referenced documents, as well as this letter, in Word format. We will submit a copy of a CD containing PDFs of these documents, via next-day FedEx.

Very truly yours,

LATHROP & GAGE L.C.

By: 


William R. Hansen

WRH/lkp

Enclosure

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07cv649

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BEFORE THE JUDICIAL PANEL  
ON MULTIDISTRICT LITIGATION

In re PHOENIX LICENSING, L.L.C., )  
PATENT LITIGATION ) MDL No. 1910  
)

DIRECT RESPONSE CORPORATION, RESPONSE WORLDWIDE  
INSURANCE COMPANY, AND WARNER INSURANCE COMPANY'S  
RESPONSE TO THE CITI PARTIES' MOTION TO CONSOLIDATE AND  
TRANSFER UNDER 28 U.S.C. § 1407

Direct Response Corporation ("DRC"), Response Worldwide Insurance Company, and Warner Insurance Company (collectively, "Response")<sup>1</sup> respectfully submit their response to the Motion to Consolidate and Transfer of Citibank, N.A., Citibank USA, N.A., Citibank (South Dakota), N.A., CitiMortgage, Inc., Citigroup, Inc., Citi Assurance Services, Inc., and Citicorp Credit Service (collectively, the "Citi Parties"). pursuant to 28 U.S.C. §1407.

I. SUMMARY

Response supports the Citi Parties' application to consolidate the various pending patent actions set forth in their motion, but urges that the actions be consolidated before the District of Arizona, which is the most appropriate forum.

Foremost, three of the six pending patent actions involving patents held by Phoenix Licensing, L.L.C. and LPL Licensing, L.L.C. (the "LPL Parties") are before the District of Arizona, including the first-filed matter brought by State Farm. *State Farm Mutual Automobile Ins. Co. v. LPL Licensing, L.L.C., et al.*, No. 2:07-cv-01329-MHM (D. Ariz., filed July 10, 2007). Secondly, according to the inventor information on the most recent of the subject patents, the inventor of the patents at issue – U.S. Patent Nos.

<sup>1</sup> The Response parties are defendants in the action entitled *Phoenix Licensing, L.L.C., et al. v. Chase Manhattan Mortgage, et al.*, No. 2:07-cv-11387-TJW-CE (E.D. Tex., filed Aug. 31, 2007).

5,987,434 (the “434 Patent”), 6,076,072 (the “072 Patent”), and 6,999,938 (the “938 Patent”) (collectively, the “Patents in Suit”) – resides in Arizona. The LPL Parties also have their principal places of business in Arizona. As a result, it is anticipated that, to a large extent, the discovery in the patent suits will likely be focused in Arizona, making the District of Arizona the logical jurisdiction in which to conduct the consolidated multidistrict litigation. Significantly, there appears to be no party office, witness, or evidence located in the Eastern District of Texas, which seems to have been chosen by the LPL Parties solely as a matter of forum shopping.

## II. FACTS

1. Response refers to and incorporates herein the facts stated in the Citi Parties' Brief in Support of Their Motion to Consolidate and Transfer Under 28 U.S.C. § 1407.

2. The lawsuits sought to be consolidated involve alleged infringement of the Patents in Suit.

3. There are currently six pending federal matters involving the Patents in Suit, filed in four different district courts: *State Farm Mutual Automobile Ins. Co. v. LPL Licensing, L.L.C., et al.*, No. 2:07-cv-01329-MHM (D. Ariz., filed July 10, 2007) (the “State Farm Action”); *State Farm Bank, F.S.B. v. LPL Licensing, L.L.C., et al.*, No. 2:07-cv-01895-HRH (D. Ariz., filed Oct. 4, 2007); *United Servs. Automobile Ass'n v. LPL Licensing, L.L.C., et al.*, No. 2:07-cv-01968-FJM (D. Ariz., filed Oct. 12, 2007); *Discover Prods., Inc. v. Phoenix Licensing, L.L.C., et al.*, No. 1:07-cv-05776-JBM (N.D. Ill., filed Oct. 11, 2007); *Citicorp Credit Servs., Inc. v. LPL Licensing, L.L.C. et al.*, No. 1:07-cv-00649-JJF (D. Del., filed Oct. 17, 2007); and *Phoenix Licensing, L.L.C., et al. v.*

*Chase Manhattan Mortgage, et al.*, No. 2: 07- cv-11387- TJW-CE (E.D. Tex., filed Aug. 31, 2007) (the "Texas Action")<sup>2</sup> (collectively, the "Patent Matters"). Hence, three of the Patent Matters have been filed in the District of Arizona, including the first-filed State Farm Action. In addition, Response intends to file its own declaratory judgment suit in the District of Arizona.

4. The LPL Parties allege in their pleadings in the Texas Action that their principal places of business are located in Scottsdale, Arizona.

5. The named inventor of the Patents in Suit is Richard M. Libman, whose address was listed as being in Scottsdale, Arizona, in the '938 Patent, which was most recently granted of the Patents in Suit.

6. The U.S. District Court for the Northern District of Illinois recently stayed the matter in that District, pending the ruling of this Panel on the present motion.

7. It appears that none of the parties has any office in the Eastern District of Texas, nor are any significant witnesses or evidence known to be located there.

8. At least seven of the twenty-three defendants in the Texas Action have moved in some form to transfer venue to the District of Arizona.

9. Response Worldwide Insurance Company and Warner Insurance Company are licensed to transact insurance in Arizona, and DRC is their holding company.

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<sup>2</sup> The LPL Parties' allegations against Response involve infringement of only the '434 Patent and the '938 Patent.

## II. ARGUMENT

### A. The Patent Matters Are Appropriate for Consolidation in Multidistrict Litigation

As more fully set forth in Sections III.A-C of the Citi Parties' Brief, the six Patent Matters may properly be consolidated for pretrial proceedings. Under 28 U.S.C. § 1407, civil actions pending in different districts and involving "one or more common questions of fact" may be transferred by the Judicial Panel on Multidistrict Litigation "for the convenience of parties and witnesses" and to "promote the just and efficient conduct of such actions."

Indeed, each of the Patent Matters involves some or all of the same three Patents in Suit. Common issues in all the Patent Matters include whether the Patents in Suit are invalid and unenforceable. Because the infringement claims will require *Markman* claim construction ruling for the Patents in Suit, common legal questions are expected to be raised and will necessarily be resolved, as well.

Moreover, the LPL Parties have not yet identified with any particularity which alleged actions of the parties are claimed to infringe the three Patents in Suit. The fact that the Patents in Suit disclose advertising and business methods, and many of the defendants may very well employ similar marketing activities, suggest that the supposedly infringing activities of the parties could be factually quite similar. A consolidated discovery process relating to each of the defendants' products and procedures in light of the infringement allegations will serve the best interests of justice.

Consolidation will serve the convenience of the parties and witnesses and will promote efficient conduct of the Patent Matters. Given the common legal and factual

issues, the various Patent Matters likely will create duplicative discovery obligations and highly similar arguments in pre-trial briefing if not consolidated, thereby causing an avoidable inconvenience and expense for both the parties and the witnesses. Further, if different courts enter *Markman* rulings on the same patents, there is a strong risk of inconsistent rulings and unfair results for the parties. Finally, consolidation serves the purposes of judicial economy and avoids added burden on the courts.

Given these considerations, Response concurs with the Citi Parties that consolidation of pre-trial proceedings in the Patent Matters is appropriate.

**B. The District of Arizona is the Most Appropriate Forum for Consolidation**

Response supports the Citi Parties' motion to consolidate the Patent Matters, but respectfully submits that the District of Arizona -- not the District of Delaware -- is the most appropriate forum for the consolidated actions.

First, the first-filed of the Patent Matters, the State Farm Action, and two other actions involving the Patents in Suit were commenced and remain pending before the District of Arizona. Indeed, there are three of the Patent Matters pending in Arizona, while each of the other districts in question only has one such matter filed there. Notably, the first-filed State Farm Action was filed in Arizona a month and a half before the Texas Action, and three months prior to the filing of the other two Arizona matters. *See In Re JP Morgan Chase & Co. Securities Litigation*, 452 F. Supp. 2d 1350, 1351 (Jud. Pan. Mult. Lit. 2006) ("The action pending there, which is the earliest filed of the three actions, is more procedurally advanced than the two Delaware actions."); *In Re Columbia Univ. Patent Litigation*, 313 F. Supp. 2d 1383, 1385 (Jud. Pan. Mult. Lit. 2004)

(transferring the consolidated actions to the district "in which half of the actions are pending").

Second, this Panel also considers the location of the patent holder. *See In Re Mirtazapine Patent Litigation*, 199 F. Supp. 2d 1380, 1380 (Jud. Pan. Mult. Lit. 2002) ("[T]he common party patentholder is located [in the transferee district] such that relevant documents and witnesses will likely be found there."). As both of the LPL Parties and the named inventor of the Patents in Suit are located in Arizona, Response believes that a great deal of discovery will likely focus upon that District, lending further weight to the argument that the District of Arizona is the most appropriate and convenient district.

In addition, the LPL Parties have no apparent connection to the Eastern District of Texas, but Response and several other parties to the Pending Matters conduct business in Arizona. Scottsdale, Arizona, is in fact the home town of the LPL Parties, which makes their choice to sue elsewhere, in a venue in which they have no nexus, rather suspect. Finally, the notably crowded patent docket in the Eastern District of Texas, Marshall Division, would benefit from the MDI proposal in this motion. *See Julie Creswell, So Small a Town, So Many Patent Suits*, The New York Times, Sept. 24, 2006, at Section 3, pg. 1.

### III. CONCLUSION

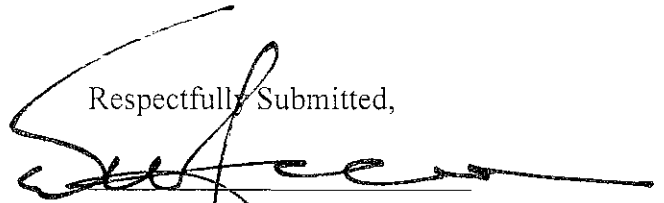
Response respectfully urges the Panel to order that the six pending Patent Matters be consolidated. The Patent Matters involve common issues of law regarding the construction and validity of the Patents in Suit, as well as the likelihood of overlapping

factual issues. The considerations of 28 U.S.C. § 1407 favor their consolidation in multidistrict litigation for pre-trial proceedings.

Moreover, Response requests that the consolidated actions proceed before the United States District Court for the District of Arizona, which is the most appropriate forum. In this regard, three of the six Pending Matters have been filed in Arizona, including the first-filed State farm Action, and the LPL Parties and the inventor of the Patents in Suit allegedly are located in Arizona.

Dated: December 3, 2007

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'W. Hansen', is written over a horizontal line.

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BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

In Re LPL AND PHOENIX LICENSING §  
PATENTS LITIGATION MDL - 1910  
§  
§

**PROOF OF SERVICE**

I hereby certify that copies of Direct Response Corporation, Response Worldwide Insurance Company, and Warner Insurance Company's (1) Response to Citi Parties' Motion to Consolidate and Transfer under 28 U.S.C. § 1407; and (2) this Proof of Service were served by first class mail on December 3, 2007 to the following:

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- (b) **Defendant:** *United Services Automobile Association v. LPL Licensing, L.L.C., et al.*; District of Arizona (Phoenix) CA No. 2:07-cv-01968-FJM
- (c) **Defendant:** *Citicorp Credit Services Inc. v. LPL Licensing, L.L.C., et. al.*; District of Delaware (Wilmington), CA No. 1:07-cv-00649-UNA
- (d) **Defendant:** *Discover Products, Inc. v. Phoenix Licensing, L.L.C., et al.*; Northern District of Illinois (Chicago), CA No. 1:07-cv-05776
- (e) **Defendant:** *State Farm Mutual Automobile Insurance Company v. LPL Licensing, et al.*; District of Arizona (Phoenix), CA No. 2:07-cv-01329-MHM
- (f) **Plaintiff:** *Phoenix Licensing, L.L.C., et al. v. Chase Manhattan Mortgage, et al.*; Eastern District of Texas (Marshall), CA No. 2:07-cv-11387-TJW-CE

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- (e) **Defendant:** *State Farm Mutual Automobile Insurance Company v. LPL Licensing, et al.*; District of Arizona (Phoenix), CA No. 2:07-cv-01329-MHM
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Chase Manhattan Mortgage Corporation  
c/o Registered Agent  
CT Corporation System  
350 N. St. Paul St.  
Dallas, TX 75201

**Defendant:** *Phoenix Licensing, L.L.C., et al. v. Chase Manhattan Mortgage, et al.*; Eastern District of Texas (Marshall), CA No. 2:07-cv-11387-TJW-CE



JP Morgan Chase Bank, N.A.  
c/o Registered Agent  
CT Corporation System  
350 North St. Paul St.  
Dallas, TX 75201

**Defendant:** *Phoenix Licensing, L.L.C., et al. v. Chase Manhattan Mortgage, et al.,;*  
Eastern District of Texas (Marshall), CA No. 2:07-cv-11387-TJW-CE

Countrywide Home Loans, Inc.  
c/o Registered Agent  
Prentice Hall Corporation System  
701 Brazos Street, Suite 1050  
Austin, TX 78701

**Defendant:** *Phoenix Licensing, L.L.C., et al. v. Chase Manhattan Mortgage, et al.,;*  
Eastern District of Texas (Marshall), CA No. 2:07-cv-11387-TJW-CE

Countrywide Insurance Services, Inc.  
c/o Registered Agent  
Corporation Service Company  
701 Brazos St., Suite 1050  
Austin, TX 78701

**Defendant:** *Phoenix Licensing, L.L.C., et al. v. Chase Manhattan Mortgage, et al.,;*  
Eastern District of Texas (Marshall), CA No. 2:07-cv-11387-TJW-CE

Discover Financial Services, Inc.  
c/o Registered Agent  
CT Corporation System  
350 North St. Paul St.  
Dallas, TX 75201

**Defendant:** *Phoenix Licensing, L.L.C., et al. v. Chase Manhattan Mortgage, et al.,;*  
Eastern District of Texas (Marshall), CA No. 2:07-cv-11387-TJW-CE

Discover Bank  
c/o Registered Agent  
100 West Market  
P.O. Box C  
Greenwood, DE 19950

**Defendant:** *Phoenix Licensing, L.L.C., et al. v. Chase Manhattan Mortgage, et al.,;*  
Eastern District of Texas (Marshall), CA No. 2:07-cv-11387-TJW-CE

GMAC Mortgage L.L.C.  
c/o Registered Agent  
Corporation Service Company  
d/b/a CSD-Lawyers Inco  
701 Brazos St., Suite 1050  
Austin, TX 78701

**Defendant:** *Phoenix Licensing, L.L.C., et al. v. Chase Manhattan Mortgage, et al.,;*  
Eastern District of Texas (Marshall), CA No. 2:07-cv-11387-TJW-CE

GMAC Insurance Marketing, Inc.  
c/o Registered Agent  
CT Corporation System  
350 North St. Paul St.  
Dallas, TX 75201

**Defendant:** *Phoenix Licensing, L.L.C., et al. v. Chase Manhattan Mortgage, et al.,;*  
Eastern District of Texas (Marshall), CA No. 2:07-cv-11387-TJW-CE

GMAC Bank  
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Corporation Service Company  
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701 Brazos St., Suite 1050  
Austin, TX 78701

**Defendant:** *Phoenix Licensing, L.L.C., et al. v. Chase Manhattan Mortgage, et al.,;*  
Eastern District of Texas (Marshall), CA No. 2:07-cv-11387-TJW-CE

Liberty Life Insurance Company  
c/o Registered Agent  
R. David Black  
2000 Wade Hampton Blvd.  
Greenville, SC 29615

**Defendant:** *Phoenix Licensing, L.L.C., et al. v. Chase Manhattan Mortgage, et al.,;*  
Eastern District of Texas (Marshall), CA No. 2:07-cv-11387-TJW-CE

State Farm Mutual Automobile Insurance Company  
c/o Registered Agent  
Jerry B. Jensen  
8900 Amberglen Blvd.  
Austin, TX 78729-1110

**Defendant:** *Phoenix Licensing, L.L.C., et al. v. Chase Manhattan Mortgage, et al.,;*  
Eastern District of Texas (Marshall), CA No. 2:07-cv-11387-TJW-CE

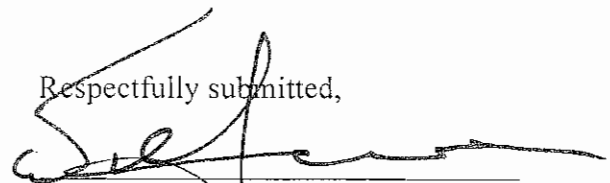
State Farm Bank, F.S.B.  
1 State Farm Plaza  
c/o Corp Tax D-3  
Bloomington, IL 61710-0001

**Defendant:** *Phoenix Licensing, L.L.C., et al. v. Chase Manhattan Mortgage, et al.,;*  
Eastern District of Texas (Marshall), CA No. 2:07-cv-11387-TJW-CE



Dated: December 3, 2007

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A handwritten signature in black ink, appearing to read 'William R. Hansen', written over a horizontal line.

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